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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1953

VIRGIL G. CARROLL, HARRY B. HOGAN, doing business as HARRY B. HOGAN PAINTING COMPANY, and SAINT PAUL-MERCURY INDEMNITY COMPANY ..... *Petitioners*

v. No. 375

M. LANZA, doing business as LAKE CHARLES ELECTRIC COMPANY ..... *Respondent*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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September 25, 1954

PARAGON PRINTING CO., LITTLE ROCK

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1953

VIRGIL G. CARROLL, HARRY B. HOGAN, doing business as HARRY B. HOGAN PAINTING COMPANY, and SAINT PAUL-MERCURY INDEMNITY COMPANY ..... *Petitioners*

v. No.

M. LANZA, doing business as LAKE CHARLES ELECTRIC COMPANY ..... *Respondent*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

Virgil G. Carroll, Harry B. Hogan, doing business as Harry B. Hogan Painting Company, and Saint Paul-Mercury Indemnity Company, petitioners, pray the court to issue a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit in the above-entitled cause and the order denying the petition for rehearing therein, and, for cause, show:

OPINIONS OF COURTS BELOW

The opinion of the United States District Court for the Western District of Arkansas, delivered November 13, 1953, upon the rendering of the judgments in this case and in the companion *Jennings* and *Sisney* cases, is reported in 116 F. Supp. 491 and appears on pages 40-69

of the printed record, nine copies of which have been filed.

The opinion of the United States Court of Appeals for the Eighth Circuit has not yet been reported in the Federal Reporter. It appears in the appendix (pp. i-xvi).

JURISDICTION

The date of the judgment sought to be reviewed, which was also the time of its entry, was July 30, 1954 (App., p. xvi).

The date of the order denying the petition for rehearing was August 24, 1954 (App. p. xx).

The date of the order staying the issuance of the mandate was September 2, 1954 (App. p. xxi).

The statutory provision believed to confer on this court jurisdiction to review the judgment in question by writ of certiorari is USCA, Title 28, Section 1254, as amplified by that part of Rule 19(b) of this Court which provides that this Court will, in considering the question whether it should grant a review on writ of certiorari, consider cases in which

> "a court of appeals has rendered a decision in conflict with a decision of another court of appeals on the same matter;
>
> "or has decided an important state or territorial question in a way in conflict with applicable state or territorial law."

The "question presented for review" (*infra*, p. 7) follows the statement of the case.

STATEMENT OF THE CASE

On January 26, 1953, petitioner, Virgil G. Carroll, an employee of petitioner, Harry B. Hogan, doing business as Harry B. Hogan Painting Company, was seriously injured as the result of the negligence of respondent, M. Lanza, doing business as Lake Charles Electric Company (R.94-97). Hogan was an insured subcontractor under Lanza, the general contractor (R.92-93). The accident occurred in Baxter County, Arkansas, where Lanza was engaged in constructing the Bull Shoals Dam (R.5). Hogan carried, with Saint Paul-Mercury Indemnity Company, the other petitioner, a standard workmen's compensation and workmen's liability policy of insurance covering his employees in Missouri and Arkansas (R.93).

Paul A. Jennings and Lonnie Sisney, who were likewise employees of Hogan, were also injured, as the result of the negligence of respondent, at the same time and place as Carroll (R.105-109).

Separate suits against Lanza were brought by Carroll (R.5-7) and Jennings (R.8-10) in the Circuit Court of Baxter County, Arkansas, and removed to the United States District Court for the Western District of Arkansas, and by Sisney in the United States District Court for the Western District of Arkansas (R.12-14). Hogan and the Saint Paul, who had made payments to the injured employees on account of their compensation coverage on them, intervened (R.20-26) or joined (R.12-14) as plaintiffs in these suits for the purpose of asserting their subrogation claims against the recovery, if any, therein.

By agreement, the suits were consolidated for trial by the Court without a jury (R.27). The District Court rendered an exhaustive opinion and made appropriate findings of fact and conclusions of law (R.40-69) when it en-

tered judgments for petitioners against Lanza as follows: In the *Carroll* case, $18,000.00 (R.70-71); in the *Jennings* case, $6,000.00 (R.71-72); and in the *Sisney* case, $22,500.00 (R.72-73).

Lanza appealed, but did not question the amount of any of the judgments (R.73-76, 83-86). The Court of Appeals affirmed the judgments in the *Jennings* and *Sisney* cases (Nos. 15,017 and 15,018 in the District Court), but reversed the judgment in the *Carroll* case (No. 15,016 in the District Court) (Appendix, pp. i-xviii) and denied Carroll's petition for rehearing (Appendix, pp. xix-xx).

Jennings and Sisney were residents of Arkansas (R. 105, 108) and always claimed, and were paid, their compensation benefits under the Arkansas Workmen's Compensation Act (R.23,14). The United States Court of Appeals for the Eighth Circuit had held, in 1945, that a general contractor (as, for example, Lanza in the case now before the Court) was, as to employees of subcontractors carrying workmen's compensation insurance (as, for example, Hogan in this case), a third party who, under Arkansas compensation law, *may be sued* for common law negligence. *Anderson* v. *Sanderson & Porter,* 146 F. 2d 58, 60. That court re-affirmed that doctrine in the Jennings and Sisney cases (Op., pp. vi-xii).

In the *Carroll* case, respondent filed, pursuant to Rule 56(b), a motion for summary judgment in his favor (R. 29-30) on the ground that, since Carroll had accepted compensation benefits for thirty-four weeks (January 26, 1953-October 10, 1953) under the Missouri Workmen's Compensation Act, he thereby "elected" to claim his compensation benefits under that Act, in consequence of which he could not maintain this third-party suit against respondent since, under the Missouri Act (which, as shown

by the opinion of the Court of Appeals in the *Anderson* case (146 F. 2d 60), is very different in this respect from the Arkansas Act), an employee of an insured subcontractor *may not maintain* an action for common law negligence against a general contractor. See *Bunner* v. *Patti*, 343 Mo. 274, 121 S.W. 2d 153, and *New Amsterdam Casualty Co.* v. *Boaz-Kiel Construction Co.*, 8 Cir., 115 F. 2d 950, which are cited in the *Anderson* case (146 F. 2d 60).

All the facts on this issue are undisputed. They are as follows:

Hogan and Carroll were residents of Missouri, and Carroll's contract of employment with Hogan was made in Missouri (R.92,94). Although Carroll never obtained an award from the Missouri Workmen's Compensation Commission and never even filed his claim with that commission (R.98,35-37), Saint Paul-Mercury Indemnity Company, the other petitioner, voluntarily paid compensation benefits to him under the Missouri Workmen's Compensation Act from the time of his injury until October 10, 1953 (R.35-37), and Carroll knew these benefits were being paid to him under the Missouri Act (R.30).

On October 10, 1953, *Carroll learned for the first time that he could have claimed workmen's compensation benefits under the Arkansas Workmen's Compensation Act.* On that very day, he wrote a letter to the Kansas City, Missouri, and Little Rock, Arkansas, offices of the insurance carrier, requesting that his "compensation benefits be computed under the Workmen's Compensation Act of Arkansas instead of the Workmen's Compensation Act of Missouri" and that his "claim be considered a claim under the Arkansas Act" (R.35,32-33). Carroll said, in an affidavit, which was never drawn in question by respondent (R.35):

> "If I had known all along that I had the right to receive compensation benefits under the Workmen's Compensation Act of Arkansas, I would, immediately after I was injured, have requested that these benefits be paid to me under the law of Arkansas instead of under the law of Missouri."

The affidavit of Harold J. Fisher, a Springfield, Missouri lawyer, dated October 20, 1953 (R.36-37), was likewise to the effect that it was not until October 10, 1953, that he advised Carroll of his right to obtain compensation benefits under the Arkansas Act if he so desired. Mr. Fisher also made it plain that Carroll's compensation claim was never filed with the Missouri Commission.

By letter dated October 21, 1953, the Little Rock office of the Saint Paul, in filing the claim with the Arkansas Workmen's Compensation Commission, said, among other things: "We have no objection to Mr. Carroll's election to receive his benefits under the Arkansas Act" (R. 31). The Arkansas Workmen's Compensation Commission promptly accepted the claim and assigned to it a number, as shown by the certificate of Dave Peel, chairman of that commission, dated October 22, 1953 (R.38); and Carroll has been receiving his compensation benefits under the Arkansas Act since that time.

On these facts, the District Court, at the trial on November 5 and 6, 1953, denied Lanza's motion for summary judgment (R.59). The Court reasoned that, since the accident occurred in Arkansas, Carroll could, from the beginning, have claimed compensation benefits under the law of Arkansas, in which event, under the doctrine of the *Anderson* case, he could have successfully maintained this suit; and that he was not thereafter estopped or precluded from renouncing his rights under the Missouri Act and claiming benefits under the Arkansas Act for the

reason that, during all the time that he was receiving benefits under the Missouri Act, he was *unaware* of his rights under the Arkansas Act (R.54-59).

The Court of Appeals took the view that Lanza's motion for summary judgment should have been granted. Overlooking the uncontradicted testimony that Carroll was not aware of his rights under the Arkansas Act while he was receiving compensation benefits under the Missouri Act, it held that Carroll could not maintain this suit for the reason that his acceptance of benefits up to October 10, 1953, under the Missouri Act constituted an election "to come within the coverage of the Missouri law and to recover his compensation under that law" and that he could not thereafter " 'change his mind' and elect to come under the Arkansas law, accept $25 a week thereafter and maintain this third-party action under the Arkansas law" (Op., p. xiv).

This is the decision which petitioners are asking this Court to review on the ground that it is in conflict with decisions of other courts of appeals and of courts of last resort in Arkansas, Missouri and other states.

QUESTION PRESENTED FOR REVIEW

The question presented is whether, under these facts, *all of which are undisputed*, Carroll ever "elected" to claim compensation benefits under the Missouri law.

The Court of Appeals held that he had so elected and that he could not thereafter "change his mind" and claim benefits under the Arkansas Act. Accordingly, since, under the Missouri statute and decisions, an employee of an insured subcontractor may not maintain an action for common-law negligence against a general contractor, the Court reversed the judgment in favor of Carroll and the other petitioners.

Petitioners assert that this holding was erroneous. Specifically, they contend not only that Carroll *did not make an election* until October 19, 1953, but that he necessarily could not have made an election before that time for the compelling reason that, prior to that day, he believed in good faith that he had the right to claim compensation benefits *only under the Missouri Workmen's Compensation Act.*

ARGUMENT

Petitioners respectfully submit that the doctrine of election of remedies, which the Court of Appeals invoked to reverse the judgment in the *Carroll* case, does not apply.

Discussing the question whether the District Court "erred in holding that Carroll had a right to maintain this common law action under the Arkansas law", the Court of Appeals said, among other things (Op., p. xiii):

> "Of course, as the court held, the state in which the accident occurred may ordinarily apply its own Workmen's Compensation laws to accidents occurring within the state. *Pacific Employers Insurance Co.* v. *Industrial Accident Commission*, 306 U.S. 493; *Cardillo* v. *Liberty Mutual Ins. Co.*, 330 U.S. 469, 476. And Arkansas applies the law of the place where the accident occurs in determining whether a person has a common law right of action.
>
> "Citing the foregoing authorities and others, the Court said: 'The Court feels that the public policy of Arkansas favoring common law actions for damages to persons and property, and favoring the application of the law of the place of the injury, precludes the application of the bar of the Missouri Act in this case.' "

The Court of Appeals did not take issue with the opinion of the District Court on this point; or, to state it af-

firmatively, the Court of Appeals quite properly agreed with the District Court that Carroll could have claimed his compensation benefits from the beginning under the Arkansas Act and that, if he had done so, he could have successfully maintained this third-party tort action against the respondent, Lanza. This analysis of the reasoning of the Court of Appeals is compelled by the following language which follows that part of its opinion above quoted and which shows that it held against Carroll's right to maintain this suit because he had elected to receive compensation benefits under the Missouri Act and because such a suit cannot be maintained if an employee is receiving benefits under that Act (Op., p. xiv):

> "But the fact remains that Carroll, as a matter of Missouri law, 'elected' to come within the coverage of the Missouri law and to recover his compensation under that law. The question, therefore, is whether, having accepted the payments of $30 a week under the Missouri law, he could 'change his mind' and elect to come under the Arkansas law, accept $25 a week thereafter, and maintain this third-party action under the Arkansas law. The court concluded that he could do so because 'At the time he was receiving payments under the Missouri Act he did not know that he had the right to recover payments under the Arkansas Act, nor did he know that the payments were, in fact, being made under the Missouri Act'.
>
> "In making this last finding, the court apparently overlooked Carroll's testimony in his deposition taken at the request of appellant on August 27, 1953, in which he testified that he was receiving workmen's compensation under the Missouri Workmen's Compensation Act."

It is wholly unimportant that the District Court inadvertently stated that Carroll did not know that his compensation payments (prior to October 10, 1953) were

being made under the Missouri Act. *The only relevant inquiry* is whether, during the time he knew he was receiving compensation benefits under the Missouri Act, he knew that he had the right to claim and receive compensation benefits under the Arkansas Act instead of the Missouri Act if he so desired. If, during that time, he did not know that he had the right to compensation benefits under the Arkansas Act, the law is clear that his acceptance of compensation benefits under the Missouri Act during that period did *not* constitute an election, this for the reason that an election of remedies requires "*a conscious exercise of choice between two remedies which are inconsistent with each other*". Carroll had no such choice until October 10, 1953.

The Court of Appeals noted that "Carroll did not file a notice with the Commission in Missouri electing to reject the Missouri law" (Op., p. xiii), as permitted under Section 3300 of the Revised Statutes of Missouri (1929) which provides as foiows (Op., p. xii):

> "Every employer and every employee, except as in this chapter otherwise provided, shall be conclusively presumed to have elected to accept the provisions of this chapter and respectively to furnish and accept the compensation as herein provided, unless prior to the accident he shall have filed with the commission a written notice that he elects to reject this chapter."

Section 3300 relates, and relates only, to the question whether an employee desires to be a *compensation employee* or a *common law employee*. The provision has no bearing upon the question whether an employee desires to receive compensation payments—if, indeed, he is a compensation employee—under the law of Missouri or under the law of any other state (for example, Arkansas) under

whose workmen's compensation act he might otherwise be entitled to receive benefits.

In other words, the failure of Carroll to file with the Missouri Commission the written notice referred to in the statute means at most that he is a compensation employee, not a common law employee; it does *not* mean that he thereby elected to receive compensation payments *under the Missouri Act.* Whether or not he has made such an election necessarily depends upon the application of the doctrine of election of remedies, wholly uninfluenced by, and separate and apart from, the fact that, by his failure to file the written notice, he became a compensation employee under the law of some state.

Moreover, if, by the above-quoted observation, the Court of Appeals intended to hold that, by Carroll's failure to file the written notice, he thereby made it impossible for the compensation law of Arkansas to be applied to his case, the holding would be in conflict with a number of decisions of this Court typified by *Pacific Employers Insurance Company* v. *Industrial Accident Commission of California,* 306 U.S. 493, 83 L. Ed. 940, 59 S. Ct. 629, wherein it was said (p. 503):

> "Although Massachusetts has an interest in safeguarding the compensation of Massachusetts employees while temporarily abroad in the course of their employment, and may adopt that policy for itself, that could hardly be thought to support an application of the full faith and credit clause which would override the constitutional authority of another state (in that case, California) to legislate for the bodily safety and economic protection of employees injured within it. *Few matters could be deemed more appropriately the concern of the state in which the injury occurs or more completely within its power*" (emphasis supplied).

This disposes of the contention that the full faith and credit clause applies in so far as the Missouri Workmen's Compensation Act is concerned.

(a) *The Decision Is in Conflict with Decisions of Other Courts of Appeals*

The decision that Carroll is precluded from maintaining this suit because he had already "elected" to claim workmen's compensation benefits under the Missouri Act, notwithstanding the undisputed proof that he was not aware of his rights under the Arkansas Act while he was accepting benefits under the Missouri Act, is in conflict with numerous decisions of other courts of appeals.

For example, the Court of Appeals for the Third Circuit, in *Pittsburgh Terminal Cool Corporation* v. *Bennett*, 73 F. 2d 387, 389, said:

> "Under these circumstances, the rule of election as stated above does not apply. *The plaintiff had never had an opportunity to elect. Election involves a choice, and choice presupposes knowledge of alternatives and freedom and opportunity to choose between them.* Election cannot be made between principal and agent until the principal is known, and here it was not known. * * * * * *
>
> The doctrine of election as urged by the defendant does not constitute a defense in this case, and is in consequence immaterial" (emphasis supplied).

Other courts of appeals have likewise emphasized the fact that there can be no election of remedies unless, at the time the election is alleged to have been made, the party had full knowledge of the nature of his inconsistent rights. The following cases are typical of many:

THIRD CIRCUIT: ***Flannery Bolt Company*** v. ***Greenslade,*** 26 F. Supp., 502, 505; affirmed 108 F. 2d

531; certiorari denied 309 U.S. 671, 84 L. Ed. 1017, 60 S. Ct. 615.

FIFTH CIRCUIT: *A. Klipstein & Company* v. *Grant*, 141 F. 72.

NINTH CIRCUIT: *Miles* v. *Lavender*, 10 F. 2d 450, 454.

TENTH CIRCUIT: *Minneapolis National Bank* v. *Liberty National Bank*, 72 F. 2d 434, 436.

This Court has likewise consistently limited the application of the doctrine of election of remedies to cases in which the party against whom it is sought to be invoked had knowledge of his rights and of the facts at the time the election is alleged to have been made. *Robb* v. *Vos*, 155 U.S. 13, 43, 39 L. Ed. 52, 15 S. Ct. 4; *United States* v. *Oregon Lumber Company*, 260 U.S. 290, 295, 67 L. Ed. 261, 43 S. Ct. 100.

(b) *The Decision on This Important State Question Is in Conflict with Applicable State Law*

The facts, as developed by the uncontradicted evidence offered by and on behalf of Carroll, bring this case squarely within the Arkansas rule and Missouri rule that Carroll did not "elect" and necessarily could not have "elected" to accept compensation benefits under the Missouri Act because, while he was receiving them, he did *not* know that he had rights under the Arkansas law. The very day (October 10, 1953) upon which he first learned of his rights under the Arkansas Act, he elected to receive compensation benefits under that Act.

The general rule is stated as follows in 28 C.J.S. 1097:

> "In order to constitute a binding election, the party must, at the time the election is alleged to have been made, have had knowledge of the facts from which the coexisting, inconsistent remedial

> rights arise, since any position taken by a party before knowing all the facts should be classed as a mistake and not as an election."

In *City National Bank* v. *McCann*, 193 Ark. 967, 980, 106 S.W. 2d 195, the Supreme Court of Arkansas had stated the principle as follows:

> "Therefore, the case of *Craig* v. *Meriwether*, 84 Ark. 298, 105 S.W. 585, cited by plaintiffs, is controlling. '*The binding force of an election cannot be predicated upon mere imputed knowledge, for the doctrine is based entirely upon the idea of a conscious exercise of choice between two remedies which are inconsistent with each other.* In order that a person who is put to his election should be concluded by it, two things are necessary: first, a full knowledge of the nature of the inconsistent rights, and of the necessity of electing between them; second, an intention to elect, manifested either expressly or by acts which imply choice and acquiescence'" (emphasis supplied).

The respondent offered no evidence to disprove Carroll's testimony that he was not aware of his rights under the Arkansas Act until October 10, 1953. Under the decision in the *City National Bank* case, the "binding force of an election cannot be predicated upon mere imputed knowledge".

This also is the rule in Missouri. In *Sutorius* v. *Mayor*, 350 Mo. 1235, 170 S.W. 2d 387, 396, the Supreme Court of Missouri said:

> "*Acts done in ignorance of one's legal rights and without knowledge of the facts necessary to a decision do not amount to a binding election where the position of the parties has not changed*" (citing Missouri cases) (emphasis supplied).

In the case at bar, the position of the parties has not changed.

As in Arkansas and Missouri, other state courts have consistently held that there can be no "election" unless the party has knowledge of the facts. For example, in *Stewart* v. *Salisbury Realty & Insurance Company*, 159 N.C. 230, 74 S.E. 736, the Supreme Court of North Carolina said:

> "It seems to be well settled that an election once made, *with knowledge of the facts*, between co-existing, remedial rights, which are inconsistent, is irrevocable and conclusive, irrespective of intent, an deonstitutes an absolute bar to any action, suit or proceeding based upon any remedial right inconsistent with that asserted by the election" (emphasis supplied).

Petitioners have found no authority to the contrary.

(c) *The Magnolia Petroleum Company Case Is Not in Point*

The opinion cites *Magnolia Petroleum Company* v. Hunt, 320 U.S. 430, 88 L. Ed. 149, 64 S. Ct. 208 (p. xv). But the case is not in point. There, the plaintiff, Hunt, who had already "sought and procured in Texas an award of compensation for his injury under its Workmen's Compensation Law" (p. 432), thereafter undertook to obtain compensation for the same injury under the Louisiana Workmen's Compensation Law. This Court properly rejected his claim under the Louisiana law, holding that "the Texas award, being a bar to any further recovery of compensation for respondent's injury, is, by virtue of the full faith and credit clause, exclusive of his remedy under the Louisiana Act" (p. 442).

As was pointed out in the statement of the case at bar (*supra*, p. 5), Carroll never obtained an award of compensation from the Missouri Commission and never even filed his claim with that commission. The *Carroll*

case is therefore clearly distinguishable from the *Magnolia Petroleum Company* case, since there is no act of the Missouri Commission to which full faith and credit can be given.

CONCLUSION

An unfortunate, if not a dangerous, precedent would be established if the opinion in the *Carroll* case should be allowed to stand. It would mean that, in the Eighth Circuit at least, the doctrine of election of remedies can be successfully asserted against a party even though, at the time he availed himself of one remedy, he was wholly unaware of the other and inconsistent remedy and even though he invoked the other remedy promptly upon learning of its existence.

The record and the opinion of both courts below establish Lanza's negligence and Carroll's freedom from negligence in the *Carroll* case to the same extent as they establish Lanza's negligence and Jennings' and Sisney's freedom from contributory negligence in their cases; and yet, as matters now stand, the judgments against Lanza in the *Jennings* and *Sisney* cases are affirmed while the judgment against Lanza in the *Carroll* case is reversed. Surely, petitioners should not be deprived of their recovery in the *Carroll* case merely because he accepted compensation benefits under the Missouri Act at a time when he did not know he had a right to obtain compensation benefits under the Arkansas Act.

The petition should, therefore, be granted and, on writ of certiorari, the judgment of the Court of Appeals should be reversed and the judgment of the District Court affirmed to the end that the decision may be in harmony with decisions of other courts of appeals and with those of state courts.

Respectfully submitted,

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Little Rock, Arkansas
Attorney for Petitioners

September 25, 1954

APPENDIX

United States Court of Appeals

FOR THE EIGHTH CIRCUIT

M. LANZA, doing business as
LAKE CHARLES ELECTRIC COMPANY ..... *Appellant*

v. No. 15,016

VIRGIL G. CARROLL, HARRY B. HOGAN, doing business as HARRY B. HOGAN PAINTING COMPANY, and SAINT PAUL-MERCURY INDEMNITY COMPANY ..... *Appellees*

M. LANZA, doing business as
LAKE CHARLES ELECTRIC COMPANY ..... *Appellant*

v. No. 15,017

PAUL A. JENNINGS, a Minor, by O. E. JENNINGS, his next friend, HARRY B. HOGAN, doing business as HARRY B. HOGAN PAINTING COMPANY, and SAINT PAUL-MERCURY INDEMNITY COMPANY .... *Appellees*

M. LANZA, doing business as
LAKE CHARLES ELECTRIC COMPANY ..... *Appellant*

v. No. 15,018

SAINT PAUL-MERCURY INDEMNITY COMPANY, HARRY B. HOGAN, doing business as HARRY B. HOGAN PAINTING COMPANY, and LONNIE SISNEY ..... *Appellees*

APPEALS FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF ARKANSAS

[July 30, 1954.]

Alston Jennings (Bruce H. Shaw was with him on the brief), for Appellant.

Shields M. Goodwin and Harold J. Fisher (Allen, Woolsey & Fisher, Arthur N. Wood, and Goodwin & Riffel were on the brief), for Appellees.

Before GARDNER, Chief Judge, WOODROUGH and THOMAS, Circuit Judges.

THOMAS, Circuit Judge.

These three cases were consolidated for trial in the district court, tried to the court without a jury, judgments were entered in each case for plaintiffs, and defendant appeals. The actions are all for damages for personal injuries to employees of a subcontractor, and Nos. 15,017 and 15,018 present one common question, namely, may a prime contractor be held liable for damages as a "third-party" within the meaning of the Arkansas statute (§ 81-1340, Ark. Stats., 1947, 1951 Supp.) in an action brought by an employee of the subcontractor to recover damages for personal injuries sustained while at work on the project covered by the subcontract? No. 15,016 presents the question whether the rights of the parties are determined by the laws of Arkansas or the laws of Missouri for damages for an injury sustained in the same accident as were the injuries complained of in Nos. 15,017 and 15,018.

The accident in which the injuries complained of arose occurred in Arkansas on January 26, 1953. The actions in the Carroll case, No. 15,016, and the Jennings case, No. 15,017, were brought in the state court of Arkansas and removed to the district court on the ground of diversity.

The Saint Paul-Mercury Indemnity Company case, No. 15,018, was brought in the federal district court in the first instance, jurisdiction being predicated on diversity of citizenship.

The defendant Lanza is a citizen of Louisiana. The plaintiffs Hogan and Carroll are both citizens and residents of Missouri. Jennings and Sisney are citizens of Arkansas. The Indemnity Company is a Delaware corporation and carries the workmen's compensation insurance on Hogan for the benefit of his employees in both Missouri and Arkansas.

Carroll was a foreman and a regular empolyee of Hogan and had been for several years before the circumstances involved in this case occurred.

The defendant Lanza had a contract with the United States Government in connection with the construction of the Bull Shoals dam in Baxter County, Arkansas. On January 22, 1952, Hogan entered into a contract with Lanza, by the terms of which he agreed to furnish all labor and material and to do all the painting required by the Lanza contract. But there was a special contract for doing the job involved in these cases. On November 7, 1952, Hogan submitted a bid to Lanza by letter to paint 18 "trash racks", saying "After racks have been set in upright position and arranged so as to be accessible for painting, all areas . . . are to be given three coats of Coal Tar Paint as specified by Army Engineers . . ." The offer was accepted on November 14, 1952.

A "trash rack" consists of a metal frame approximately 13 feet long, 10 feet high and 12 inches wide. Inside the frame are four cross bars parallel to the ground and about 2 feet apart. Inside the frame there are, also, 25 steel fins, each of which is about 10 feet long, 5 inches wide, and

seven-eighths of an inch thick. When the rack is in an upright position the fins are perpendicular to the ground and approximately the height of the rack. The fins in each rack weighed about 4,000 pounds and the remainder of the rack about 1,400 pounds, so that each rack weighed approximately 5,400 pounds.

In November, 1952, Lanza's employees delivered the racks to the place where they were to be painted south of the Bull Shoals Dam on the east side of the river. At first they were stacked on the ground in piles of three racks each, and while they were in that position Carroll, Jennings and Sisney, employees of Hogan, the subcontractor, painted the outer surface of the racks and some of the fins. Thereafter defendant Lanza's employees set the racks in an upright position to be painted by Hogan's employees.

When the racks were first set up to be painted they were placed on parallel metal railroad rails resting on wooden planks on the ground. The racks were placed about three feet apart and held in place by spreader braces. Ten racks were set up in a row and 8 racks in a parallel row with an aisle about 4 feet wide between them. The racks in each row were attached to each other by braces and the end racks were supported by two guy wires attached to metal pins in the ground. All of this work was done by Lanza's employees and after it was completed Hogan's employees proceeded with the painting.

The railroad rails upon which the racks had been placed belonged to the United States government, and upon its request Lanza's employees undertook on January 26, 1953, to remove the rails and to substitute for them railroad ties. The braces were removed and by the use of pry poles they undertook to lift the racks up slightly remove the rails and to place in their stead the railroad ties. The spreader

braces were first removed and then the work of substitution proceeded. While this work was going on Hogan's employees continued painting on the 8-rack row.

The ground on which the racks were placed was filled with dirt and was soft and wet at the time.

About 11:30 a.m. one of the guy wires on the 8-rack row broke and all the racks fell; and Carroll, Jennings and Sisney were severely injured. The court found that they did not know that Lanza's employees had begun work on the 8-rack row at the time.

The states of Missouri and Arkansas both have Workmen's Compensation laws. The Saint Paul-Mercury Indemnity Company is the workmen's compensation insurer for the Harry B. Hogan Painting Company in connection with the injury suffered by Virgil G. Carroll when the trash racks fell. The court entered orders permitting Hogan and the Indemnity Company to intervene as plaintiffs in the cases brought by Carroll and Jennings. All the appellees, Carroll, Jennings and Sisney, have been paid workmen's compensation benefits by the Indemnity Company. Jennings and Sisney were paid benefits under the laws of Arkansas. Carroll was paid benefits for 34 weeks until October 10, 1953, under the Missouri law. On that date he requested that his benefits be paid under the law of Arkansas, and they have been paid to him since then under that law.

In his answers to the three actions Lanza denied that the employees of Hogan were injured by reason of his negligence or that of his employees, and alleged that Hogan's employees were guilty of contributory negligence or that they assumed the risk of the injuries suffered by them. Prior to the trial Lanza filed motions for summary judgment in each case on the ground that the remedies

provided by the workmen's compensation acts were exclusive. The motions were overruled by the trial court. At the conclusion of plaintiffs' evidence the motions were renewed and were again overruled. After the conclusion of the trial judgment was entered in favor of the Indemnity Company, Hogan and Sisney for $22,500; in favor of Carroll for $18,000; and in favor of Jennings in the sum of $6,000, from which judgments Lanza has appealed.

Appellant Lanza contends here:

1. That the remedies provided by the Arkansas Workmen's Compensation Act are exclusive, and that appellant is entitled to judgment as a matter of law in all three cases;

2. That the remedies provided by the Missouri law are exclusive, and that appellant is entitled to judgment in the Carroll case as a matter of law; and

3. That it cannot be consistently held that appellant was negligent and that Carroll, Jennings and Sisney were free of contributory negligence.

It is conceded by all parties that the Workmen's Compensation law of Missouri is exclusive and that Carroll who was employed in Missouri and who accepted 34 payments under that law could not maintain his action unless his election on October 10, 1953, to receive his compensation benefits under the Arkansas law is sufficient to sustain the judgment in his favor.

The Arkansas statute, § 81-1304, Ark. Stat. 1947 (1951 Supp.), provides also that "The rights and remedies herein granted to an employee subject to the provisions of this act, on account of injury or death, shall be exclusive of all other rights and remedies of such employee. . . ."

It is contended by appellees, and it was held by the court, that Lanza was liable to them as a "third party" under § 81-1340, Ark. Stats. 1947 (1951 Supp.), which provides:

"*Third-Party Liability.*—(a) *Liability Unaffected.* (1) The making of a claim for compensation against any employer or carrier for the injury or death of any employee shall not affect the right of the employee, or his dependents, to make claim or maintain an action in court against any third-party for such injury, but the employer or his carrier shall be entitled to reasonable notice and opportunity to join in such action. If they, or either of them, join in such action they shall be entitled to a first lien upon two-thirds of the net proceeds recovered in such action that remain after the payment of the reasonable cost of collection, for the payment to them of the amount paid and to be paid by them as compensation to the injured employee or his dependents.

* * * * * * *

"(b) *Subrogation.* An employer or carrier liable for compensation under this act for the injury or death of an employee shall have the right to maintain an action in tort against any third-party responsible for such injury or death. After reasonable notice and opportunity to be represented in such action has been given to the compensation beneficiary, the liability of the third-party to the compensation beneficiary shall be determined in such action as well as the third-party's liability to the employer and carrier. . . ."

The primary obligation of the employer to provide compensation for his employees is found in § 81-1305, Ark. Stats. 1947 (1951 Supp.), as follows:

"*Liability for Compensation.*—Every employer shall secure compensation to his employees and pay or provide compensation for their disability or death from any injury arising out of and in the course of employment, without regard to fault as a cause of such injury: . . . . The pri-

mary obligation to pay compensation is upon the employer and the procurement of a policy of insurance by an employer to cover the obligation in respect to this act shall not relieve him of such obligation."

It is the contention of the appellant that he, Lanza, being in this case the prime contractor, is not a "third-party" within the meaning of § 81-1340 supra, and in support of this contention he cites § 81-1306, Ark. Stats. 1947 (1951 Supp.), which provides:

"*Subcontractors.*—Where a subcontractor fails to secure compensation required by this act, the prime contractor shall be liable for compensation to the employees of the subcontractor.

"Any contractor or his insurance carrier who shall become liable for the payment of compensation on account of injury to or death of an employee of his subcontractor may recover from the subcontractor the amount of such compensation paid or for which liability is incurred. The claim for such recovery shall constitute a lien against any moneys due or to become due to the subcontractor from such prime contractor. A claim for recovery, however, shall not affect the right of the injured employee or the dependents of the deceased employee to recover compensation due from the prime contractor or his insurance carrier."

Clearly Lanza is not liable in this proceeding if § 81-1304 of the Arkansas statute, supra, is applicable. But the court found that that statute is not applicable to the situation because Lanza is liable as a "third-party" under § 81-1340, supra.

Before discussing the applicable law involved in appellant's points 1 and 2, supra, we observe that we have reviewed the record and have concluded that the court's findings that the negligence of Lanza's employees was the cause of the accident resulting in the injuries complained of and that the injured men, Carroll, Jennings and Sisney,

were not guilty of contributory negligence as a matter of law are supported by substantial evidence, and, therefore, we cannot hold that such findings are "clearly erroneous" within the meaning of Rule 52(a) of the Federal Rules of Civil Procedure, 28 U.S.C.A. It was Lanza's employees who were engaged in removing the railroad rails and placing the railroad ties under the racks when the accident occurred. They had been working on the 10-rack row and the injured painters were at work on the 8-rack row when, without warning the painters, Lanza's employees started work on the 8-rack row. Their negligence in placing too great a strain on the guy wire caused the accident.

To support his contention that the remedies provided by the Arkansas Workmen's Compensation Act are exclusive, and that he is entitled to judgment as a matter of law, appellant relies upon § 81-1306 of the Arkansas statutes, supra, which provides that when a subcontractor fails to secure compensation required by the act the prime contractor shall be liable to such employees; and that in such a case the prime contractor may recover from his subcontractor the amount of such compensation so paid or for which liability is incurred. In this instance Hogan was the actual employer of the injured employees, and Lanza was not the statutory employer because it is without dispute in the record that Hogan had compensation insurance covering the appellees at the time they were injured.

The questions presented here were directly involved in the case of *Anderson et al.* v. *Sanderson & Porter et al*, 8 Cir., 146 F.2d 58; and we there considered the amendment to the Constitution of Arkansas authorizing the legislature to enact Workmen's Compensation laws and the laws enacted pursuant thereto and, in the absence of any decision of the Supreme Court of Arkansas, this court held that in

such a case as this an injured employee of a subcontractor could recover against a prime contractor for personal injuries resulting from the negligence of the prime contractor. And attention was directed to the provision of the Amendment to the Constitution wherein it is provided:

"The General Assembly shall have power to enact laws prescribing the amount of compensation to be paid by employers for injuries to or death of employees, and to whom said payment shall be made. It shall have power to provide the means, methods, and forum for adjudicating claims arising under said laws, and for securing payment of same. Provided, that otherwise no law shall be enacted limiting the amount to be recovered for injuries resulting in death or for injuries to persons or property; and in case of death from such injuries the right of action shall survive, and the General Assembly shall prescribe for whose benefit such action shall be prosecuted."

The opinion of this court in the *Anderson* case, supra, was rendered January 4, 1945, and no decision of the Supreme Court of Arkansas has since held to the contrary.

Appellant, while admitting the applicability of the Anderson decision, argues that it has been overruled by this court in the case of *Huffstettler* v. *Lion Oil Co.*, 8 Cir., 208 F.2d 549; and "if it has not, it ought to be overruled in the light of the Arkansas decisions subsequent to it", referring to *Hobbs-Western Company* v. *Craig*, 209 Ark. 630, 192 S.W.2d 116; *Hobbs-Western Company* v. *Morris*, 212 Ark. 105, 204 S.W.2d 889; and *Brothers* v. *Dierks Lumber & Coal* Co., 217 Ark. 632, 232 S.W.2d 646.

In making this argument it is evident that appellant has overlooked certain rules applicable to appellate reviews. The rules referred to were stated briefly by this court in *Clarke Hybrid Corn Company, Inc.*, v. *Stratton Grain Co.*,

decided June 29, 1954 (not yet published in the Federal Reporter), as follows:

"One of them [the rules] is that the prevailing party is entitled to have the evidence viewed in the aspect most favorable to it, and to have the benefit of all reasonable inferences deducible therefrom. *Cleo Syrup Corporation* v. *Coca-Cola Co.*, 8 Cir., 139 F.2d 416, 418.

"A second rule is that this Court will not retry issues of fact or substitute its judgment for that of the trial court respecting such issues. *Cleo Syrup Corporation* v. *Coca-Cola Co.*, supra, 139 F.2d 416, 417-418; *Pendergrass* v. *New York Life Insurance Co.*, 8 Cir., 181 F.2d 136; *Noland* v. *Buffalo Insurance Co.*, 8 Cir., 181 F.2d 735, 738.

"A third rule is that the burden of demonstrating error is upon the appellant, and that in cases controlled by local law this Court will accept the considered views of the trial judge as to the applicable law unless convinced that his views are erroneous. *Western Casualty & Surety Co.* v. *Coleman*, 8 Cir., 186 F.2d 40, 43; *Kimble* v. *Willey*, 8 Cir., 204 F.2d 238, 243."

See, also, *Russell* v. *Turner*, 8 Cir., 148 F.2d 562, 564; *Buder* v. *Becker*, 8 Cir., 185 F.2d 311; *Hartford Accident & Indemnity Co.* v. *Federal Deposit Ins. Corp.*, 8 Cir., 204 F.2d 933, 936.

It will be observed also that Honorable John E. Miller, judge in the Western District of Arkansas, before whom this case was tried, is the same judge before whom the *Huffstettler* case was tried; and his opinions in both cases disclose that he carefully reviewed the Arkansas statutes and decisions. See his findings and opinion in the *Huffstettler* case in 110 F. Supp. 222, and in this case in 116 F. Supp. 491.

The statutes of Arkansas and the cases cited above sustain the contention of the appellees also that the remedies

provided by the Arkansas Workmen's Compensation act are exclusive only where the employer-employee relationship exists.

Appellant's second contention is that the remedies provided by the Missouri Workmen's Compensation Act are exclusive, and that appellant is entitled to a judgment as a matter of law in No. 15,016, the *Carroll* case.

Both Hogan and Carroll are citizens of Missouri, and the contract of employment between them was entered into in Missouri. Section 3300 of the Revised Statutes of Missouri, 1929, provides:

"Every employer and every employee, except as in this chapter otherwise provided, shall be conclusively presumed to have elected to accept the provisions of this chapter and respectively to furnish and accept the compensation as herein provided, unless prior to the accident he shall have filed with the commission a written notice that he elects to reject this chapter."

And the Supreme Court of Missouri, construing this statute has held that an employee of a subcontractor cannot sue the general contractor as a third-party and at the same time collect compensation from his immediate employer when the injury is within the Missouri Workmen's Compensation Act. See *Bunner* v. *Patti, et al.*, 343 Mo. 274, 121 S.W.2d 153; *New Amsterdam Casualty Co.* v. *Boaz-Kiel Construction Co.*, 8 Cir., 115 F.2d 950.

The evidentiary facts with perhaps one exception are not in dispute. The accident in which Carroll was injured occurred in Arkansas January 26, 1953. On March 2, 1953, he filed his complaint in this case. He was paid workmen's compensation under the Missouri law at the rate of $30 each week for 34 weeks until October 10, 1953. Prior to that date counsel for appellant proposed a stipulation be ex-

ecuted showing that payments had been made under Missouri law. The stipulation was not executed by Carroll and his attorney. In October, 1953, Carroll was advised by his attorney, Mr. Fisher, that he had a right to elect to take compensation under the Arkansas law at the rate of $25 a week instead of $30 a week under the Missouri law. Upon Mr. Fisher's suggestion he elected to do so. Thereafter he received compensation payments under the Arkansas law.

Hogan and the Indemnity Company were permitted to intervene and to join with Carroll as plaintiffs and to be awarded a lien upon two-thirds of the net proceeds recovered in the action. And the judgment from which this appeal was taken awarded to Carroll the sum of $18,000 with costs and established a lien thereon in favor of Hogan and the Indemnity Company on two-thirds of the net proceeds of said judgment for the payment to them of the amounts paid and to be paid as compensation to Carroll.

In the *Carroll* case, No. 15,016, the question for determination is whether the court erred in holding that Carroll had a right to maintain this common law action under the Arkansas act or whether the action is barred by Missouri law. As observed supra, under the Missouri law the action is barred. Carroll did not file a notice wth the Commission in Missouri electing to reject the Missouri law. Section 3300, Mo. Stat. Ann., 1929; *Hope* v. *Barnes Hospital*, 227 Mo. Ap. 1055, 55 S.W.2d 319. And the Missouri act applies to injuries received outside the state under a contract of employment made in the state. Section 3310, Mo. Stat. Ann.; *Hungate* v. *Hudson*, Mo., 169 S.W.2d 682.

Of course, as the court held, the state in which the accident occurred may ordinarily apply its own Workmen's Compensation laws to accidents occurring within the state.

Pacific Employers Insurance Co. v. *Industrial Accident Commission*, 306 U.S. 493; *Cardillo* v. *Liberty Mutual Ins. Co.*, 330 U.S. 469, 476. And Arkansas applies the law of the place where the accident occurs in determining whether a person has a common law right of action.

Citing the foregoing auhtorities and others, the court said: "The Court feels that the public policy of Arkansas favoring common law actions for damages to persons and property, and favoring the application of the law of the place of the injury, precludes the application of the bar of the Missouri Act in this case."

But the fact remains that Carroll, as a matter of Missouri law, "elected" to come within the coverage of the Missouri law and to recover his compensation under that law. The question, therefore, is whether, having accepted the payments of $30 a week under the Missouri law, he could "change his mind" and elect to come under the Arkansas law, accept $25 a week thereafter, and maintain this third-party action under the Arkansas law. The court concluded that he could do so because "At the time he was receiving payments under the Missouri Act he did not know that he had the right to recover payments under the Arkansas Act, nor did he know that the payments were, in fact, being made under the Missouri Act."

In making this last finding, the court apparently overlooked Carroll's testimony in his deposition taken at the request of appellant on August 27, 1953, in which he testified that he was receiving workmen's compensation under the Missouri Workmen's Compensation Act.

It was recognized by the court and by the parties that the full faith and credit clause of the Constitution must be considered in this case. In the opinion of the court it is

said: "If the decision of the Supreme Court in the case of *Bradford Electric Light Company, Inc.*, v. *Clapper, Admx.*, 286 U.S. 145, were the last pronouncement of the Court on the question, there is little doubt but that the Full Faith and Credit clause would require the application of the Missouri bar, because the facts in the case were substantially the same as the facts in this case. However, over a period of years the holding and rationale of the *Clapper* case have been so modified by later decisions of the Supreme Court that the extent and force of the opinion is, to say the least, doubtful."

In support of this conclusion the court cites *Pacific Employers Insurance Co.* v. *Industrial Accident Commission*, 306 U.S. 493; *Alaska Packers Ass'n* v. *Industrial Accident Commission of California*, 294 U.S. 532; *Cardillo* v. *Liberty Mutual Insurance Co.*, 330 U.S. 469, 476; and *Industrial Commission of Wisconsin* v. *McCartin*, 330 U.S. 622.

The court, however, does not cite *Magnolia Petroleum Co.* v. *Hunt*, 320 U.S. 430, in which case the facts more nearly coincide with the facts of the present case than do the facts in the cited cases. In the *Magnolia* case Hunt, a resident of Louisiana, was employed in that state by Magnolia as a laborer in connection with the drilling of oil wells. In the course of his employment he went to Texas where, while working on an oil well, he was injured. He procured workmen's compensation for his injuries under the Texas Workmen's Compensation law. Under the Texas law the award of compensation was final and exclusive, resembling the Missouri law in that respect. Afterward Hunt instituted a proceeding in Louisiana to recover compensation under the laws of that state. He was awarded the relief demanded by the state court of Louisiana, and the Supreme Court reversed. It is difficult to distinguish that case from the

present one. We are disposed, therefore, to apply what appears to us to be its authority here. See, also, *Ohlhaver* v. *Narron*, 4 Cir., 195 F.2d 676; and *New Amsterdam Casualty Co.* v. *Boaz-Kiel Construction Co.*, 8 Cir., 115 F.2d 950.

The result is that the judgment in No. 15,016 is reversed, and the judgments in Nos. 15,017 and 15,018 are affirmed.

(Judgment in Cause No. 15016)

United States Court of Appeals
for the
Eighth Circuit

No. 15016 - - - September Term, 1953
Friday, July 30, 1954.

M. Lanza, doing business as Lake Charles Electric Company, Appellant,

vs.

Virgil G. Carroll and Harry B. Hogan, doing business as Harry B. Hogan Painting Company, and Saint Paul-Mercury Indemnity Company.

Appeal from the United States District Court for the Western District of Arkansas.

This cause came on to be heard on the record from the United States District Court for the Western District of Arkansas and was argued by counsel.

On Consideration Whereof, it is now here ordered and adjudged by this Court, that the judgment of the said District Court, in this cause, be, and the same is hereby, reversed with costs; and that M. Lanza, doing business as Lake Charles Electric Company have and recover against Virgil G. Carroll and Harry B. Hogan, doing business as Harry B. Hogan Painting Company, and Saint Paul-Mercury Indemnity Company the sum of One Hundred

Seventy-five and No/100 ($175) Dollars for his costs in this behalf expended and have execution therefor.

An it is further ordered by this Court that this cause be and the same is hereby remanded to the said District Court for proceedings consistent with the opinion of this Court this day filed herein.

July 30, 1954.

(Judgment in Cause No. 15017)

United States Court of Appeals
for the
Eighth Circuit

No. 15017 - - - September Term, 1953.
Friday, July 30, 1954.

M. Lanza, doing business as Lake Charles Electric Company, Appellant,

vs.

Paul A. Jennings, a Minor, by O. E. Jennings, his Next Friend, and Harry B. Hogan, doing business as Harry B. Hogan Painting Company, and Saint Paul-Mercury Indemnity Company.

Appeal from the United States District Court for the Western District of Arkansas.

This cause came on to be heard on the record from the United States District Court for the Western District of Arkansas and was argued by counsel.

On Consideration Whereof, it is now here ordered and adjudged by this Court, that the judgment of the said District Court, in this cause, be, and the same is hereby, affirmed.

July 30. 1954.

(Judgment in Cause No. 15018)

United States Court of Appeals
for the
Eighth Circuit

No. 15018 - - - September Term, 1953.
Friday, July 30, 1954.

M. Lanza, doing business as Lake Charles Electric Company, Appellant,

vs.

Saint Paul-Mercury Indemnity Company, Harry B. Hogan, doing business as Harry B. Hogan Painting Company, and Lonnie Sisney.

Appeal from the United States District Court for the Western District of Arkansas.

This cause came on to be heard on the record from the United States District Court for the Western District of Arkansas and was argued by counsel.

On Consideration Whereof, it is now here ordered and adjudged by this Court, that the judgment of the said District Court, in this cause, be, and the same is hereby, affirmed.

July 30, 1954.

UNITED STATES COURT OF APPEALS
EIGHTH CIRCUIT

No. 15,016-Civil

M. LANZA, ETC., *Appellant*

v.

VIRGIL G. CARROLL, Et Al, *Appellees*

APPELLEES' PETITION FOR REHEARING

Now come Virgil G. Carroll, Harry B. Hogan, doing business as Harry B. Hogan Painting Company, and St. Paul-Mercury Indemnity Company, appellees herein, and respectfully petition the Court to grant them a rehearing in this cause and, upon rehearing, to affirm the judgment herein, and, for cause, say:

The Court erred in holding that appellee, Carroll, "as a matter of Missouri law, 'elected' to come within the coverage of the Missouri law and to recover his compensation under that law" and that he could not thereafter "'change his mind' and elect to come under the Arkansas law" (Op., p. 14).

Shields M. Goodwin
Boyle Building
Little Rock, Arkansas

Attorney for Appellees

CERTIFICATE

I, Shields M. Goodwin, attorney for the appellees in this cause, do hereby certify that I have prepared and read the above and foregoing petition for rehearing and also the brief in support thereof, that they are filed in good faith and that they are believed to meritorious.

This 16th day of August, 1954.

/s/ Shields M. Goodwin

(Order denying Petition of Appellees for Rehearing in No. 15016.)

United States Court of Appeals
for the
Eighth Circuit

No. 15016 - - - September Term, 1953.
Tuesday, August 24, 1954.

M. Lanza, etc.,	)	Appeal from the
Appellant,	)	United States
vs.	)	District Court
	)	for the Wes-
Virgil G. Carroll, et al.	)	tern District
	)	of Arkansas.

Petition for rehearing filed by appellees in the above case has been considered by the Court and It is now here Ordered that same be and is hereby denied.

August 24, 1954.

(Order Staying Issuance of Mandate in Cause No. 15016)

United States Court of Appeals
for the
Eighth Circuit

No. 15016 - - - September Term, 1953.
Thursday, September 2, 1954.

M. Lanza, doing business as Lake Charles Electric Company,	)	Appeal from the United States District Court for the Western District of Arkansas.
Appellant,	)	
vs.	)	
Virgil G. Carroll, et al.	)	

On Consideration of the motion of the appellees for a stay of the mandate in this cause pending a petition to the Supreme Court of the United States for a writ of certiorari, it is now here ordered by this Court that the issuance of the mandate herein be, and the same is hereby, stayed for a period of thirty days from and after this date, and if within said period of thirty days there is filed with the Clerk of this Court a certificate of the Clerk of the Supreme Court of the United States that a petition for writ of certiorari and record have been filed, the stay hereby granted shall continue until the final disposition of the case by the Supreme Court.

September 2, 1954.